

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **August 13, 2002 Work Session**

AGENDA ITEM NO.: **6**

CONSENT:

REGULAR: **X**

CLOSED SESSION:

ACTION: **X**

INFORMATION:

(Confidential)

ITEM TITLE: **Deer Management**

RECOMMENDATION: See attached document.

SUMMARY: The attached document provides a history of past deer management efforts in the City, suggests options for further actions and makes recommendations.

PRIOR ACTION(S): See attached document.

FISCAL IMPACT: To be determined.

CONTACT(S): Kimball Payne, Col. Bennett

ATTACHMENT(S): Deer Management report.

REVIEWED BY: lkp

DEER MANAGEMENT IN THE CITY OF LYNCHBURG

The Situation

In July, City Council was presented a petition signed by over 1000 residents that called for actions to control the population of white-tailed deer in Lynchburg. The petition reinforced what some members of City Council had already identified, an increasing conflict between deer and citizens manifested most clearly in damage to landscapes and gardens and in automobile accidents involving deer. This is not a new issue in the City.

In 1991 the Lynchburg Wildlife Study Commission was created specifically to study the deer problem and suggest solutions. The commission's report was presented to City Council in October 1991 and on January 28, 1992 City Council approved the report and recommendations from City administration. Proposed measures to control the deer population included "public education, deer population reduction by a municipally employed Wildlife Management Specialist, hunting in rural areas, and continued research on deer population control measures." Those measures, some to a greater and some to a lesser extent, have formed the foundation of deer management activities in the City for a decade.

Estimates of the number of deer in the City range from 3000 to 5500, a wide range that may be exaggerated. The 1996 Virginia Deer Management Plan estimated there to be 15 to 30 deer per square mile in the City and Amherst and Campbell Counties. In Bedford, the population density was estimated at more than 30 deer per square mile. The population estimates noted above for the City would translate to somewhere between 60 and 110 deer per square mile. Even given deer's ability to double its population every year, that density seems to be questionably high. What is without question, however, is that the terrain of the City, characterized by forested steep slopes and stream valleys provides excellent habitat for white-tailed deer. Forage is abundant, there are no natural predators, and there is adequate cover for concealment. Furthermore, migration routes from surrounding rural areas, especially Bedford County, are easily found.

How does a community know when there are too many deer? One indication would be evidence that the deer community had exceeded the area's "biological carrying capacity" or the ability of the natural habitat to support a healthy and sustainable population. Evidence of exceeding that capacity would be overgrazing of natural vegetation, especially ground cover (a clear browse line at the height of the deer's reach), and unhealthy individuals due to starvation or disease. In its worst manifestation the population might exhibit high mortality rates during the winter. So far, there is no evidence that the biological carrying capacity of the City is limiting the deer population. Therefore, it is reasonable to

assume that the number of deer will naturally continue to increase for the foreseeable future.

Evidence is growing, however, that the deer population is exceeding the “cultural carrying capacity” of the City. This is defined as “the maximum number of deer that can coexist compatibly with humans” and is a much more subjective measure that could include such evidence as vehicle accidents, landscape damage and other undesirable deer/human interactions.

Realities

As the community begins a renewed effort to address this issue, I suggest that the following principles, or realities, should be accepted.

- It is impossible to eliminate all deer within the City. The question then becomes, “How many deer in the City is acceptable?” Fairfax County has a density goal of 15 to 20 deer per square mile. This would mean only 1000 deer in Lynchburg. The removal of between 2000 and 4500 deer from the City would be a considerable challenge and removal would only open up habitat for more deer to move in. Nevertheless, the deer population will continue to grow if nothing is done.
- Any new or increased effort will require additional resources. A decision will have to be made that this is the best place to devote already limited resources in lieu of applying those resources in other areas.
- Culling deer is the only viable option for population control or reduction. Trapping and relocating deer is not an option. Mortality rates of up to 60% have been reported and there is no place to relocate trapped deer. Contraception is expensive, ineffective except in tightly controlled populations, and is generally considered by experts to be impractical.
- There is an ugly side to culling programs just like there is in other government programs such as solid waste management and wastewater treatment. Wounded and dead deer may offend some. Some proposals could raise concerns about noise, trespass and safety.
- There is not unanimous public opinion on this issue. Many citizens consider the deer to be a positive amenity in the City, some feed them, and even some in favor of control are opposed to killing the animals. One question for Council to consider is, “What public input is needed to address this matter?” in the areas of problem definition, alternatives examination, and program selection. Wildlife management experts stress the need for public involvement in wildlife management programs.

Lynchburg took the first recommended step with the establishment of the Wildlife Study Commission in 1991 and its conclusions still seem valid today.

- Regardless of the desire to reduce the deer population, any program must have public safety as its prime consideration. For ten years, the City's deer management efforts have operated without incident. An accident could seriously erode public support.
- More can be done to encourage peaceful coexistence. A major component of the program proposed in 1992 was public education. This has not been followed up on to any significant extent.

Past and Current Management Efforts

Deer management efforts since 1992 have focused primarily in three areas, the issuance of kill permits to property owners, the Wildlife Management Specialist (sharpshooter) program and allowing hunting on parcels of over 25 acres. Each of these will be discussed below.

Deer management programs operate under the jurisdiction of the Virginia Department of Game & Inland Fisheries (VDGIF). Both the State Code and the Virginia Administrative Code provide guidance.

The relevant State Code section is as follows:

Excerpt from the Code of Virginia, 1950, as amended

§ 29.1-529. Killing of deer or bear damaging fruit trees, crops, livestock, or personal property or creating a hazard to aircraft or motor vehicles.

A. Whenever deer or bear are damaging fruit trees, crops, livestock or personal property utilized for commercial agricultural production in the Commonwealth, the owner or lessee of the lands on which such damage is done shall immediately report the damage to the Director or his designee for investigation. If after investigation the Director or his designee finds that deer or bear are responsible for the damage, he shall authorize in writing the owner, lessee or any other person designated by the Director or his designee to kill such deer or bear when they are found upon the land upon which the damages occurred. However, the Director or his designee shall have the option of authorizing the capture and relocation of such bear rather than authorizing the killing of the bear, provided that the

relocation occurs within a reasonable period of time; and whenever deer cause damage on parcels of land of five acres or less, except when such acreage is used for commercial agricultural production, the Director or his designee shall have discretion as to whether to issue a written authorization to kill the deer. The Director or his designee may limit such authorization by specifying in writing the number of animals to be killed and duration for which the authorization is effective and may in proximity to residential areas and under other appropriate circumstances limit or prohibit the authorization between 11:00 p.m. and one-half hour before sunrise of the following day. The Director or his designees issuing these authorizations shall specify in writing that only antlerless deer shall be killed, unless the Director or his designee determines that there is clear and convincing evidence that the damage was done by deer with antlers. Deer or bear killed pursuant to such authorization shall be utilized or disposed of within twenty-four hours of being killed. Any owner or lessee of land who has been issued a written authorization shall not be issued an authorization in subsequent years unless he can demonstrate to the satisfaction of the Director or his designee that during the period following the prior authorization, the owner or his designee has hunted bear or deer on the land for which he received a previous authorization.

B. Whenever deer are creating a hazard to the operation of any aircraft or to the facilities connected with the operation of aircraft, the person or persons responsible for the safe operation of the aircraft or facilities shall report such fact to the Director or his designee for investigation. If after investigation the Director or his designee finds that deer are creating a hazard, he shall authorize such person or persons or their representatives to kill the deer when they are found to be creating such a hazard.

C. Whenever deer are creating a hazard to the operation of motor vehicle traffic within the corporate limits of any city, the operator of a motor vehicle may report such fact to the Director or his designee for investigation. If after investigation the Director or his designee finds that deer are creating a hazard within such city, he may authorize responsible persons, or their representatives, to kill the deer when they are found to be creating such a hazard. The carcass of every deer or bear so killed may be awarded to the owner or lessee by the Director or his designee, who shall give such person a certificate to that effect on forms furnished by the Department. Any person awarded a deer or bear under this section may use the carcass as if he had killed the animal during the hunting season for deer or bear.

D. Whenever deer are damaging property in a locality in which deer herd population reduction has been recommended in the current Deer Management Plan adopted by the Board, the owner or lessee of the lands on which such damage is being done may report such damage to the Director or his designee for investigation. If after investigation the Director or his designee finds that deer are responsible for the damage, he may authorize in writing the owner, lessee or any other person designated by the Director or his designee to kill such deer when they are found upon the land upon which the damages occurred. The Director or his designee also may limit such authorization by specifying in writing the number of animals to be killed and the period of time for which the authorization is effective. The carcass of every deer so killed may be awarded to the owner or lessee by the Director or his designee, who shall give such person a certificate to that effect on forms furnished by the Department. Any person awarded a deer under this section may use the carcass as if he had killed the animal during the hunting season for deer. The requirement in subsection A of this section, that an owner or lessee of land demonstrate that during the period following the prior authorization deer or bear have been hunted on his land, shall not apply to any locality that conducts a deer population control program authorized by the Department.

E. The Director or his designee may revoke or refuse to reissue any authorization granted under this section when it has been shown by a preponderance of the evidence that an abuse of the authorization has occurred. Such evidence may include a complaint filed by any person with the Department alleging that an abuse of the written authorization has occurred. Any person aggrieved by the issuance, denial or revocation of a written authorization can appeal the decision to the Department of Game and Inland Fisheries. Any person convicted of violating any provision of this title shall receive written authorization to kill deer or bear, but shall not (i) be designated as a shooter nor (ii) carry out the authorized activity for a person who has received such written authorization.

(Code 1950, § 29-145.1; 1954, c. 686; 1956, c. 684; 1958, cc. 315, 609; 1960, c. 129; 1962, c. 229; 1970, c. 79; 1980, c. 271; 1987, cc. 48, 488; 1991, c. 99; 1993, cc. 204, 273; 1994, c. 571; 1996, c. 314; 1998, c. 179; 1999, c. 563; 2000, c. 6; 2002, c. 174.)

Prior to 1998 kill permits could be issued for damage to flowers, shrubs and ornamental or shade trees. In 1998 the State Code was changed and kill permits could no longer be issued for deer damage to personal property that was

not utilized for commercial agricultural purposes. Guidance from the VDGIF on the State Code provisions is provided in Attachment A. As a result of the State Code change, kill permits issued under Section 29.1-529 of the code are limited to the City Cemetery, Lynch Pin Industrial Park, the Lynchburg Regional Airport, Falwell Airport, IDA property off of Enterprise Drive and City Rights of Way.

The City hired its first Wildlife Management Specialist in March of 1992. A second part-time position was approved in 1993 and since then two specialists have each worked about 20 hours a week. Since the inception of the program nearly 1500 deer have been killed. The specialists utilize shotguns and rifles equipped with a silencer to cull deer of either sex. They operate in areas with an active kill permit or under a general permit issued by VDGIF to the City for deer population control.

In 1997, one year after the state adopted its first Deer Management Plan, the Virginia Administrative Code (VAC) was amended to allow VDGIF the regulatory latitude to develop an urban deer management program (DPOP) which could extend the season beyond (before or after) the “traditional” deer season on site-specific areas. The VAC language is as follows:

Excerpt from the Virginia Administrative Code
Department of Game & Inland Fisheries

4VAC15-40-240. Animal population control.

Whenever biological evidence suggests that populations of game animals or fur-bearing animals may exceed or threaten to exceed the carrying capacity of a specified range, or whenever population reduction of a species is necessary to manage for another wildlife species, or whenever the health or general condition of a species indicates the need for population reduction, or whenever the threat of human public health and safety or significant economic loss indicates the need for population reduction, the director is authorized to issue special permits to obtain the desired reduction by licensed hunters or licensed trappers on areas prescribed by department wildlife biologists. Designated game species or fur-bearing species may be taken in excess of the general bag limits on special permits issued under this section under such conditions as may be prescribed by the director.

VDGIF utilizes this authority to issue DPOP permits under two principle types of programs, extended hunting seasons and sharpshooters. Lynchburg’s DPOP permit is for the latter type of program. The City’s second annual permit under this regulation expires on August 31, 2002 and a request has been made for a renewal. A copy of the current permit is included as Attachment B. It should be noted that the first condition of the permit states, “The Capt. of Special

Operations, or his designee, must approve persons taking deer under this permit. Under normal circumstances the city's Wildlife Management Specialist(s) shall be the individuals involved in the deer culling activity." A private property owner who wishes to have deer removed from his or her property contacts the police department and a determination is made as to the ability to shoot deer on the property in a safe manner. Presently, there are fifty-five (55) properties where the specialists are allowed to cull deer in the City under the DPOP permit.

There has been some speculation that past efforts to cull deer were more successful than those of the present. A number of reasons have been offered. My analysis indicates that that may be true, for the following reasons. First of all, the change to the State Code in 1998 limited the ability to issue kill permits. That was overcome in 2000 with the implementation of the first DPOP permit. Nevertheless, with only fifty-five properties participating in the program, out of nearly 30,000 parcels in the City, the ability to take deer where they can be found is limited. In addition, the development of some properties in recent years has eliminated areas where culling could be accomplished. Safety has always been an overriding concern with the deer management program and due to the density of development in some areas of the City, shooting is just not prudent. In addition, many areas, such as along the expressway, that were open ground ten years ago have become overgrown to the extent that spotting deer is difficult. Another challenge is that in some neighborhoods citizens do not want deer shot and there have been instances of them making noises to scare off the deer when the sharpshooters were in the vicinity. Finally, an argument could be made that the deer have gotten smarter, they recognize the sharpshooters' truck and no longer stand still when spotlighted. For all of the above reasons, the wildlife management specialists typically see about ten times more deer than they are able to shoot in any given time period.

The third program to control deer is established in Section 27-67.1 of the City Code as follows:

Sec. 27-67.1. Same—Exception.

(a) The provisions of section 27-67 shall not apply to shotguns discharging pellets using number 5, 6, 7, 8 or 9 shot under the following conditions:

(1) On land that is twenty-five (25) acres or more of contiguous area, and

(2) Used primarily for agricultural purposes, and

(3) The landowner has applied for an annual permit from the chief of police to use his property for this purpose.

The permit shall be granted by the chief of police or his designee if the application meets the requirements of this section, and

(4) Any person or persons discharging a shotgun as set forth above shall, at all times, while engaged in such activity, have in his possession written permission from the landowner to discharge such weapon on the premises.

(5) All hunting must be done in compliance with the laws of the Commonwealth of Virginia and the rules and regulations of the Board of Game and Inland Fisheries.

(6) 00 to #4 shot may be used in shotguns for the sole purpose of hunting deer.

(7) No person or persons shall hunt deer in the city by the use of a dog or dogs.

(b) No person shall discharge a shotgun within one hundred (100) yards of any building, dwelling, street, sidewalk, alley, roadway or public land or public place within the city limits.

(c) Any person engaging in hunting must comply with any conditions or restrictions imposed by the Chief of Police as a part of the permit. (Code 1959, § 33-1; Ord. of 9-7-76; Ord. No. O-92-048, 2-11-92; Ord. No. O-92-372, 12-8-92; Ord. No. O-02-126, 7/9/02)

This section allows deer hunting, during the regular season, on parcels of twenty-five (25) acres or more under a permit granted by the Chief of Police. Currently, ten (10) parcels have permits for hunting. Interestingly, the Wildlife Management Specialists do not have access to any of those parcels for culling activities.

The City's newest program for deer management would allow bow hunting under terms similar to that allowed for shotguns. Although Council has adopted an ordinance to allow bow hunting, there are concerns that the ordinance may be too restrictive. The ordinance language is as follows below. The underlined sections could be considered for amendment.

Sec. 27-67.3. Bow hunting.

(a) The provisions of Section 27-67 shall not apply when discharging an arrow from a bow for the purposes of deer hunting within the city limits during the Early Special Urban Archery Season, the Full General Firearms Deer Season or the Late Special Archery Season, as designated in regulations promulgated

by the Virginia Department of Game and Inland Fisheries, under the following conditions:

(1) On land that is ten (10) acres or more of contiguous area, and {See comment under paragraph (c) below.}

(2) The landowner has applied for an annual permit from the chief of police to use his property for this purpose. The permit shall be granted by the chief of police or his designee if the application meets the requirements of this section, and {This is an administrative burden but does provide a record of where archery hunting might take place within the City.}

(3) Any person discharging a bow as set forth above shall, at all times, while engaged in such activity, have in his possession written permission from the landowner to discharge such a weapon on his premises, and

(4) All hunting must be done in compliance with the laws of the Commonwealth of Virginia and the rules and regulations of the board of game and inland fisheries, and

(5) Arrows used for hunting must have a minimum width head of seven-eighths (7/8) of an inch and the bow used for such hunting must be capable of casting a broadhead arrow a minimum of one hundred twenty-five (125) yards. {This language is already in the state regulations and is redundant here.}

(b) Discharge of a bow will be from an elevated tree stand located at least twelve (12) feet above the ground.

(c) No person shall discharge a bow within one hundred (100) yards of any building, dwelling, street, sidewalk, alley, roadway or public land or public place within the city limits. {Other localities, Fairfax County for example, impose no acreage or distance limitations.}

(d) It shall be unlawful to carry firearms while hunting with bow and arrow. {State regulations prohibit carrying a firearm during the special archery seasons but not during the regular hunting season.}

(e) No person shall hunt deer in the city by use of dog or dogs.

(f) Any person engaging in deer hunting must comply with any conditions and restrictions imposed by the chief of police as part of

the permit. (Ord. No. O-02-124, 6/25/02; Ord. No. O-02-126, 7/9/02)

Options

There are a number of options for increasing deer management activities that could be considered. They are summarized as follows:

- Hire more sharpshooters. The police department has provided an initial annual cost of \$55,000 to hire and provide equipment, including a vehicle, for two more Wildlife Management Specialists.
- Include as a condition of granting a permit for hunting within the City (by either firearms or archery), a requirement that the property owner(s) allow the Wildlife Management Specialists access to cull antlerless deer.
- Explore with VDGIF the flexibility in the restrictions on the DPOP permit. For example, could individuals other than the sharpshooters be allowed to cull the deer? VDGIF staff have suggested that one opportunity under the DPOP program may be to provide for an extended hunting season (archery & firearms), e.g. regulated hunting in January, February and March, under an additional DPOP permit.
- Relax the restrictions on bow hunting. Allow hunting on less than ten contiguous acres and closer to private buildings or dwellings with the owner's permission. Rather than prohibiting bow hunting within 100 yards of a street, sidewalk, alley, roadway or public land or public place, the ordinance could be amended to prohibit the discharge of a bow across or over such places.
- Develop a certification program for bow hunters to cull deer on private property under the City's DPOP permit.
- Charge citizens a fee for the services of the Wildlife Management Specialists or bow hunters under the program identified above.
- Conduct controlled hunts in certain areas of the City such as Blackwater Creek or Peaks View Park. Utilize off-duty law enforcement personnel (on overtime) from the area for initial hunts to determine the feasibility of conducting future hunts.

- Under any program that would allow the culling of deer by private individuals outside of the regular hunting season, provide a bounty for the taking of does or antlerless deer to minimize hunting solely for trophy bucks.
- Adopt an ordinance prohibiting the feeding, baiting or otherwise attracting of deer on property within the City. There appears to be no restriction either under state law or VDGIF regulations regarding such an ordinance. Such laws, when adopted in other parts of the nation, have proven to be quite controversial.

Recommendations

A measured and incremental approach to increased deer management activities is the best approach. Initial steps should be less aggressive than subsequent steps and an evaluation of the success of each step should be conducted before advancing to a more aggressive activity. The need to maintain public safety and to avoid unintended consequences should be considered throughout. In addition, some degree of public discussion and consensus on appropriate activities should be included. Throughout, deer management activities should be coordinated with VDGIF.

The following initial steps are recommended:

1. Develop a public awareness and information program to help citizens understand the challenges of living with deer in an urban setting. This would include, among other things, information on repellants, deer-resistant plantings, defensive driving, and the problems with feeding or attracting deer.
2. Work with VDGIF to expand the flexibility of the current DPOP permit and/or seek another permit to extend the hunting season within the City.
3. Conduct one or more controlled hunts, utilizing off-duty law enforcement personnel to evaluate the effectiveness of such activities.
4. Relax the restrictions on bow hunting to allow hunting in smaller areas (e.g. five acres) and closer to buildings with the owner's permission.
5. Seek long-range approaches with VDGIF. Work for the City to be identified in the next Virginia Deer Management Plan as a locality needing a reduction in the deer population. This may open up opportunities under Section 29.1-529 (D) of the State Code. The

current plan (the first one) was adopted in 1996 and the plan is scheduled for update in 2004. The City should also participate in VDGIF's further development of management programs for urban deer.

Respectfully Submitted,

Kimball Payne, City Manager